IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

THURSDAY, THE 23RD AUGUST 2007 / 1ST BHADRA 1929

Crl.Rev.Pet.No. 3138 of 2007()

CRA.313/2001 of ADDL.SESSIONS COURT (ADHOC)-III, THALASSERY
CC.891/1996 of JUDL.MAGISTRATE OF FIRST CLASS COURT, KUTHUPARAMBA

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REVN. PETITIONER: (APPELLANT/ACCUSED):

K.K. ASSIA, D/O. MAMMED,
JAMEELA MANZIL, KANNAVAM.

BY ADV. SRI.T.M.ABDUL LATHEEF

RESPONDENTS: (RESPONDENTS/COMPLAINANTS):

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1. MAKKUNNATH ASSISSU, S/O. HUSAIN,
POONTHOTTIL HOUSE, EDAYAR, KANNAVAM P.O.

2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 23/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. R.P. No. 3138 OF 2007

Dated this the 23rd day of August, 2007

O R D E R

The revision petitioner, a lady, was the sole accused in C.C. No.891/96 on the file of the JFCM, Kuthuparamba. The said case arose out of a private complaint filed by one Mukkunnath Assissu alleging an offence punishable under section 420 IPC. The allegation was that sometime in May, 1994 when the complainant came to know that the accused was recruiting persons for overseas employment to Saudi Arabia, he approached the accused who assured him that she would arrange a visa to the complainant for a job in Saudi Arabia having a salary equivalent to Rs.10,000/- (Rupees ten thousand only) and demanded Rs.65,000/- (Rupees sixty five thousand only) towards the price of visa. She took an initial payment of Rs.25,000/- (Rupees twenty five thousand only). On the insistence of the accused, the complainant paid Rs.5,000/- (Rupees five thousand only) more to the accused who went on demanding more amounts when the complainant and one Premachandran who were sent to Calicut for medical examination and finally no employment was secured for the complainant who was induced to part with the above amounts with the intention of deceiving him.

2. On the side of the prosecution, 3 witnesses were examined as PWs 1 to 3 and 3 documents were marked as Exts.P1 to P3.

3. The accused when examined under section 313(1)(b) Cr.P.C. denied the incriminating circumstances appearing against him in the evidence for the prosecution and maintained his innocence.

4. The learned Magistrate after trail, as per judgment dated 23.5.01 found the revision petitioner guilty of the offence and sentenced her to undergo simple imprisonment for six months and to pay a fine of Rs.3,000/- (Rupees three thousand only) and on default to pay the fine, to suffer simple imprisonment for two months and also directed her to pay a sum of Rs.25,000/- (Rupees twenty five thousand only) as compensation. Aggrieved by the conviction and sentence, the revision petitioner preferred Criminal Appeal No.313/01 before the Sessions Court, Thalassery. As per judgment dated 9.5.07, the lower appellate court confirmed the conviction but modified the sentence to imprisonment for six months and to pay the sum of Rs.25,000/- (Rupees twenty five thousand only) by way of compensation under section 357(3) Cr.P.C. It is the said judgment which is assailed in this revision.

5. After hearing both sides, I am not inclined to interfere with the conviction recorded against the revision petitioner since the same is entered after a careful evaluation of the oral and documentary evidence in the case. The conviction is accordingly confirmed.

6. What now survives for consideration is the question of adequacy of sentence. Having regard to the facts and circumstances of the case and the further fact that the revision petitioner is a lady, I am of the view that she does not deserve penal servitude by way of incarceration and that interests of justice will be adequately met by directing the revision petitioner to undergo imprisonment till the rising of the court and to pay an appropriate compensation. Accordingly, the sentence imposed on the revision petitioner is set aside and instead, she is directed to suffer imprisonment till the rising of the court and to pay a sum of Rs.25,000/- (Rupees twenty five thousand only) by way of compensation under section 357(3) Cr.P.C. to PW1 within 45 days from today. If the compensation as ordered above is not paid as aforesaid, the revision petitioner shall suffer simple imprisonment for three months by way of default sentence.

In the result, this revision is disposed of confirming the conviction but modifying the sentence as above.

(V. RAMKUMAR, JUDGE)

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